

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MARIA S. REYNERO,

CIVIL NO. 05-923 (DWF/JSM)

Plaintiff,

v.

REPORT AND RECOMMENDATION

DISCOVER CARD, et al.,

Defendants.

JANIE S. MAYERON, U.S. Magistrate Judge

The above matter came on before the undersigned upon defendant J.C. Penney's Motion to Dismiss [Docket No. 8] and defendant Discovery Card's Motion to Dismiss [Docket No. 10]. This matter has been referred to the undersigned Magistrate Judge for a Report and Recommendation by the District Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c).

For the reasons discussed below and for the reasons discussed in this Court's September 27, 2005 Order [Docket No. 27], IT IS RECOMMENDED THAT:

1. Defendant J.C. Penney's Motion to Dismiss [Docket No. 8] be **GRANTED**;
2. Defendant Discovery Card's Motion to Dismiss [Docket No. 10] be **GRANTED**; and
3. Plaintiff's Complaint be dismissed **WITHOUT PREJUDICE**.

FINDINGS OF FACT/REPORT

In April of 2005, plaintiff filed an action in Ramsey County District Court against defendants Discover Card, JC Penney and JC Penney Insurance. Defendants subsequently removed plaintiff's action to federal Court on May 13, 2005 [Docket No. 1].

Plaintiff attempted to effectuate service on defendants by mailing her summons and Complaint to JC Penney Insurance and Discover Card. No service was attempted on JC Penney. This Court in its September 27, 2005 Order on defendants' motion to dismiss, concluded that plaintiff had failed to properly serve defendants.

Federal Rule of Civil Procedure 4(m) states:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). "A district court has the power to dismiss a case for failure to comply with its rules." Marshall v. Warwick, 155 F.3d 1027, 1030 (8th Cir. 1998); see also Schooley v. Kennedy, 712 F.2d 372, 373 (8th Cir.1983) (per curiam) (citations omitted) (finding that pro se litigants are not excused from compliance with procedural and local rules).

Here, plaintiff's case was removed on May 13, 2005 (her complaint was filed initially filed in Ramsey County sometime in April of 2005). The 120-day period in which to serve defendants has expired. The Court, pursuant to Rule 4(m), gave the pro se plaintiff until November 25, 2005 (almost an addition two months) to properly serve defendants.

On November 29, 2005, JC Penney and JC Penney Insurance's counsel represented in a letter to the Court, copied to plaintiff, that there had been no attempts by plaintiff to properly serve defendants with regards to this matter. Further, this Court has received no communication from plaintiff relating to her attempts to serve defendants as of the date of this Report and Recommendation.

Pursuant to Fed. R. Civ. P. 4(m), where service of a Complaint has been ineffective, the Court must dismiss Plaintiff's Complaint without prejudice or direct that service be effected within a specified time. Because plaintiff has failed to serve defendant within the specified time period by this Court in its September 27, 2005 Order, it is recommended that the Complaint be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m).

RECOMMENDATION

For the reasons set forth above and based on all the files, records, and proceedings herein, IT IS RECOMMENDED that:

1. Defendant J.C. Penney's Motion to Dismiss [Docket No. 8] be **GRANTED**;
and
2. Defendant Discovery Card's Motion to Dismiss [Docket No. 10] be **GRANTED**; and
3. Plaintiff's Complaint be dismissed **WITHOUT PREJUDICE**.

Dated: December 5, 2005

s/ Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties on or before **December 22, 2005** a copy of this Report, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection.